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Summary record (partial)* of the 2603rd meeting

Held at Headquarters, New York, on Wednesday, 18 March 2009, at 3 p.m.

Chairperson: Mr. Iwasawa

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 3.10 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Third periodic report of Rwanda (*continued*) (CCPR/C/RWA/3; CCPR/C/RWA/Q/3/Rev.1 and Add.1)

1. *At the invitation of the Chairperson, the members of the delegation of Rwanda took places at the Committee table.*

2. **The Chairperson** invited the Committee to continue with its queries on questions 1 to 14 of the list of issues (CCPR/C/RWA/Q/3/Rev.1).

3. **Ms. Motoc** said that the Committee had received information concerning the existence of arbitrary detention centres in Rwanda. She asked whether the Government was aware of any such centres and, if so, how it was dealing with them.

4. She commended Rwanda for the progress it had made in protecting women's rights. Greater attention was being paid to the issue of rape and measures had been introduced to address it. That said, more statistics would be welcome. She was particularly curious to know about efforts to punish persons found guilty of rape and to reintegrate rape victims into society. Lastly, she wished to know how the Government was addressing domestic violence.

5. **Sir Nigel Rodley** said that, given the traumatic events of the 1990s, Rwanda's decision to abolish the death penalty was remarkable. While the Covenant did not require the abolition of the death penalty, the Committee had always considered the Covenant to be an essentially abolitionist document. Rwanda's decision set a fine example to the subregion, region and world at large.

6. While he understood Rwanda's decision to replace the death penalty with life imprisonment, he had some concerns about the sentence of solitary confinement for life and, in particular, the practice of preventing persons given such a sentence from receiving visitors. In that connection, he was pleased to note that the draft law on execution of the sentence of life imprisonment would allow visits. He wished to know when the draft law would be approved and under what conditions visits would take place.

7. According to the response to question 4, the members of the military police responsible for killing prisoners at the Mulindi military detention centre in December 2005 had been acting in self-defence. However, also according to that response, disciplinary action had been taken against the members of the military police concerned and the prison Director had been fired. It was difficult for him to reconcile the two statements. If disciplinary action had been taken because the individuals concerned had used unnecessary force, the argument of self-defence surely no longer applied.

8. Lastly, the response to question 6 stated that security officers might use force only to pursue a legitimate objective. The reporting State should explain how it determined which objectives were legitimate and which were not. Traditionally, the Committee interpreted article 6 in light of the use of firearms by law enforcement officials. The general principle followed was that the force used must not exceed the force being prevented. In other words, lethal force should be used only to prevent lethal force.

9. **Mr. Pérez Sánchez-Cerro**, noting that the National Human Rights Commission was responsible, inter alia, for examining human rights violations committed in Rwanda by State entities, persons professing to represent the State, organizations and individuals (para. 93 of Rwanda's third periodic report (CCPR/C/RWA/3)), requested more information about the Commission's investigation procedure. He was particularly interested in knowing to which body the Commission reported and whether or not it was effective and independent.

10. The Committee had learned that a certain General was recruiting children from Rwanda's refugee camps. Kidnapping might be a more appropriate term, since the children usually disappeared at night without their parents' knowledge. He asked whether the Government planned to investigate the issue and punish those responsible.

11. Lastly, the reporting State should explain how the Government planned to strengthen the Gacaca courts and prevent violations of due process.

12. **Mr. Fathalla** asked why international treaties and conventions which had been duly ratified or approved took precedence over all organic laws and ordinary laws except for the Constitution and referendum laws (report, para. 4). He was curious to know whether the

Government had adopted any comprehensive environmental protection measures that would help protect citizens' right to life.

13. **Mr. Salvioli**, referring to the reporting State's comment that the Covenant was not often invoked by petitioners and therefore not often applied by the judiciary, asked whether Rwanda had introduced any judicial training programmes, particularly on the implementation of the Covenant.

14. Referring to the comments made by Sir Nigel Rodley, he asked whether military courts were competent to try common crimes.

15. It had been suggested that women who were raped in prison were raped by other prisoners. Yet paragraph 222 of the report stated that women in detention facilities lived in special blocks that were segregated from the men's quarters and guarded by female warders. He asked whether that was true and requested precise statistics on the number of persons found guilty of rape and sentenced.

16. Lastly, he expressed concern about article 191 of the new draft criminal code, which seemed to criminalize homosexuality, and asked whether the reporting State considered it to be compatible with the Covenant.

17. **Mr. Rivas Posada**, referring to the second part of question 10, said it was still unclear whether or not individuals could avail themselves of effective remedies during a state of siege or emergency. In most countries there were official channels for reviewing a decision to declare a state of siege or emergency should individuals, groups or institutions consider that decision to be illegal or unconstitutional. The reporting State should clarify whether or not that was the case in Rwanda.

18. **Mr. Bouzid**, also referring to question 10, asked whether Rwandan citizens needed both a passport and a laissez-passer to travel abroad (report, para. 212) and, if so, whether that was the case all the time or only during a state of emergency.

19. **Mr. Nsengimana** (Rwanda) conveyed the delegation's apologies for not having provided an English translation of its responses to the list of issues. It would have been happy to do so, but had understood that the Secretariat would be responsible for the translation, as had been the case for the report.

20. With regard to Ms. Wedgwood's concern about the limited size of the delegation of Rwanda in comparison to those of other countries, he said that unfortunately some intended members of the delegation, for example a police officer, had been unable to obtain visas in time to attend.

21. With regard to the question on how the Covenant was being translated into national law and into practice, he said that in Rwanda's monist approach, the Covenant and other international instruments were implemented automatically. However, before any changes could be made to the Constitution, the people needed to be consulted. Therefore, if an international instrument conflicted with the Constitution, time had to be taken to bring the matter to Parliament or, if necessary, to call a referendum. That did not mean that the Constitution could not be changed, just that there was a procedure to follow and it was not automatic. With regard to practice, as in any country, when a law was passed, efforts needed to be made to raise awareness both among the general public and for judges. While there was no lack of willingness, any change in the law took time to come fully into effect.

22. The lack of statistical data was a problem which stemmed from the difficulties of reconstruction of the country's infrastructure. Rwanda did have an institute of statistics, but it was still new. Rwanda would be able to include more statistical data when it submitted its next report to the Committee.

23. Turning to the question of the Gacaca system of justice, he recalled the principle that justice delayed was justice denied. The regular system of justice in Rwanda had found it impossible to cope with such a large volume of cases — more than one million — so that many people had spent a considerable time in prison awaiting trial. The Gacaca system had been set up in response to that situation, inspired by traditional forms of justice and reconciliation but also using modern court practices, forming a new hybrid system. That system responded to the unique nature of the crimes committed in Rwanda, which necessitated reconciliation as well as justice. In the Gacaca system the people themselves came together to determine responsibility for the crimes committed and hand down punishments, but it also provided a voice of reconciliation. The system also had assistance from trained legal advisers who visited the courts to give advice where needed, particularly for problematic cases. That legal support was not necessarily provided

to individuals, but instead to the court as a whole, to assist in its decision-making. Of course it was not a perfect system, but even the regular court system was not perfect and the international community had found no other way of resolving the problem. The Gacaca system had worked -- Rwanda was now probably the most peaceful and safe country in the region.

24. Regarding freedom of expression, he said that the media, in particular Radio Mille Collines, had played a reprehensible part both before and during the genocide, heightening divisions and inciting violence, even providing specific details on where to find people so that they could be killed. Journalists accused of those offences had the right to legal counsel and their cases had generally gone smoothly. Journalists were rarely imprisoned, since the cases against them were largely for civil offences. Today the press in Rwanda was free, and some newspapers were highly critical of the Government.

25. With regard to the matter of detention, the warehouse that had been referred to was not in fact a detention centre or prison, but rather a transit centre where young people were rapidly sorted and returned to their families or sent to education centres. The adults, classed as vagrants, were in most cases repeat offenders and drug dealers; they were prosecuted for their offences.

26. With regard to the question about women becoming pregnant in prison, he stressed that prisons were divided into two gender-segregated zones. Rape was therefore not possible in prison. However, in some cases women had been granted provisional release — as a result of the President's communiqué — and had later returned to prison, pregnant. They had not however become pregnant in prison.

27. Turning to the issue of prison conditions, particularly with regard to life imprisonment, he said that Rwanda's draft law on execution of the sentence of life imprisonment had been approved by the Council of Ministers and would be sent to Parliament. In Rwanda, there were two kinds of life imprisonment. Under the first category, prisoners became eligible for conditional release or presidential pardon after 10 years, with good behaviour. In the second category, prisoners only became eligible after 20 years. In addition, where prisoners of the first type could receive visitors once a week, the second type could receive them only once every two weeks. Those prisoners were not held in solitary confinement, they were simply given their own cells — like prisoners in the West — whereas the rest of the prison population slept in dormitories, as was standard in many developing countries. In general terms, prison conditions were constantly improving, in line with improvements in the economic conditions of Rwanda.

28. Where the International Criminal Tribunal for Rwanda was concerned, Rwanda was cooperating with the Tribunal and would continue to do so. That did not mean however that it would blindly submit to the Tribunal's requests; some dialogue was necessary. There had been cases where witnesses from Rwanda appearing before the Tribunal had been mistreated during cross-examination. Rwanda had protested and the problems had since been resolved. Another issue was that the Tribunal had to complete its work. Security Council resolution 1503 (2003) provided the conditions for completion but the Tribunal seemed unwilling to comply so Rwanda had again spoken up. There needed to be a mechanism to monitor the implementation of the resolution without the constant need to bring the matter before the Security Council.

29. With regard to the matter of different methods of justice, the situations in Rwanda could not be compared to that of the former Yugoslavia. In Rwanda, though there were killings on both sides, one side had been attempting to stop the genocide being perpetrated by the other side. In cases where people were killed in order to stop them committing genocide, that itself was not organized killing and any accusations of war crimes in those cases were incorrect. With regard to cases of war crimes that had been transferred from the International Criminal Tribunal to the Rwandan courts, the Prosecutor had agreed that one case in which two young soldiers had shot priests and bishops, which had been identified as a war crime, could be tried in Rwanda. The two perpetrators — now a captain and a major — had confessed and been convicted. That was a demonstration of the fact that those on the side of stopping the genocide had convicted their own forces.

30. Turning to the issue of extrajudicial killings and disappearances, he said that in the Mulindi case, even though the killings were deemed to have been in self-defence and the case had been closed, disciplinary measures had been taken because the prison authorities could have dealt with the situation earlier, before it got out of hand. As for disappearances, investigations had

been carried out in all cases and when offenders had been found they had been prosecuted.

31. With regard to Mr. Amor's concern about the composition of the National Unity and Reconciliation Commission, he said that in fact there was a broad range of participation, including from civil society. For example, the Vice-Chairman of the Commission was a church minister — churches were part of civil society in Rwanda. Another, recently deceased, member of the Commission had been a priest and head teacher.

32. With regard to the question about the limitations of reconciliation, he said that even with the progress made by the National Unity and Reconciliation Commission and the Gacaca courts, reconciliation was a long process and achieving national harmony after what had happened in Rwanda was not easy. Progress had been made but there was still some way to go before the process could be considered complete. Poverty was also a factor in the recovery, so continued poverty reduction efforts were essential. Survivors of the genocide and young people who had been involved in the genocide were now working together on microfinance projects.

33. **Ms. Tumukunde** (Rwanda) said that the National Human Rights Commission played a major role in all phases of treaty body report preparation. In the early phases, the Commission engaged in education and advocacy about reporting and held trainings on the human rights covenants. The Commission had been instrumental in calling for an inter-ministerial team as a permanent mechanism and provided technical advice during report preparation. It also provided a forum for stakeholders to make inputs to the report and reminded the various ministries involved regarding timely preparation. The Commission was involved in the translation of the concluding remarks into the local language and their implementation. When necessary, the Commission prepared a "shadow report", although, for the current meeting, there had been no reason to do so.

34. In regard to gender equality, a legal review of the Penal Code and the Family Code was under way, and that topic would be taken up in the next report. All Government institutions had gender focal points who monitored gender mainstreaming and gender budgeting. Those issues were not the sole responsibility of the Ministry of Gender and Family Promotion. The Ministry of Finance had recently met with gender promotion stakeholders and representatives of the United Nations Development Fund for Women and other organizations to discuss gender mainstreaming and gender budgeting as they pertained to the national budget. There was also a gender observatory charged with monitoring adherence to gender equality in institutions and the budget.

35. **Mr. Nsengimana** (Rwanda) said that in Rwanda international treaties came after the national Constitution in the legal hierarchy, followed by domestic law. In cases where an international treaty and the Constitution were in contradiction, the issue was brought to the Parliament and, if appropriate, the Constitution could be amended.

36. Military courts had sole jurisdiction over military people. However, if a military person and a civilian colluded in the commission of an offence, the civilian would be tried in military court, so as not to break up the case.

37. Rwanda had a law on the environment and an environmental protection agency. It had ratified several international instruments on the environment and engaged in regional environmental cooperation through the East African Community and the Nile Basin Initiative. Rwanda had abolished the use of plastic bags, and people entering the country were required to leave them at the airport.

38. The Foreign Ministry was planning a project to promote respect for treaty obligations, which included training in international law to be conducted in conjunction with treaty implementation. The training would encourage legal professionals to enforce international treaties.

39. Rwanda issued both passports and laissez-passer documents. The latter were for use in emergencies and for travel to neighbouring countries. They cost less than passports and were easier to obtain. All citizens had the right to receive a passport.

40. Training sessions were regularly held for judges, police, prosecutors, court officials and other justice and law enforcement professionals. Military service people received human rights training, as did peacekeepers before departing on mission. After the translation of the Covenant into Kinyarwandan, relevant training had been organized.

41. **Ms. Tumukunde** (Rwanda) said that according to the Constitution of 2003, the National Human Rights

Commission was charged with the protection and promotion of human rights and also examined violations and educated people on human rights issues. It reported to the Parliament, managed its own budget and handled planning and staff recruitment independently.

42. Commission representatives had the right to visit prisons unannounced if violations were suspected, to request any document or summon any individual who might aid in its work and to speak with relevant institutions to resolve issues amicably, if possible.

43. **Mr. Nsengimana** (Rwanda) said that on the subject of recruitment of child soldiers, the expert report was incomplete and less than impartial. It failed to note cases of which the Committee had been notified in which children on their way to join the Rwandan Army had been prevented from joining, and it failed to mention cases of recruiters who had been arrested and would stand trial. Other important information had been buried in the annexes to the report where readers might not find it.

44. Before declaring a state of emergency, the President consulted with the Parliament. There were avenues for Parliament to act if it was not in agreement with the imposition of a state of emergency.

45. **Mr. Rusanganwa** (Rwanda) said that homosexuality was a crime under the current Criminal Code. There was a national consensus that homosexuality should remain a criminal offence in the new draft criminal code currently before the Parliament, although it was possible that the Parliament might change that in the future.

46. Non-sexual forms of violence such as domestic violence, murder, etc. were sanctioned under the law.

47. **Ms. Wedgwood** said that she had not asked why people were being held in the warehouse detention centre. Rather, she had noted that if children were held there, then conditions must be decent and procedures well-administered.

48. Given the many thousands of people who had been awaiting trial in prison in 1994 and the dangers of overcrowding at that time, the use of the Gacaca courts had been understandable. However, if Gacaca courts were used in cases where severe penalties were imposed, a consistent process must be applied. It was unfair, for example, to hold a trial in which one side had a lawyer and the other did not. There had been a report of a Gacaca trial in which a judge, accused of rape, had presided over the trial of his accuser. That was not right. The very real problems faced in 1994 did not explain irregular procedure 15 years later.

49. While it appeared that a new statute would resolve the issue of solitary confinement, that issue still remained somewhat unclear. A written response on the matter would be helpful.

50. While it was generally agreed that Radio Mille Collines had acted in support of the genocide during the massacres and should have been shut down at the time, incitement to massacre should not be conflated with ordinary political dissidence, and such past events should not be used as an argument to silence dissent.

51. She requested a written response in regard to particular cases of possible war crimes against the four people she had referred to earlier: Lieutenant-Colonel Augustin Cyiza, former vice-president of the Supreme Court, former Member of Parliament Leonard Hitimana, Damien Musayidizy and Jean-Marie Vianney. It would be good for the Rwandan Government itself if those cases were resolved thoroughly and transparently.

52. Allegations concerning violations by the military must be taken seriously. Rwanda should conduct a transparent investigation of the allegations raised by the Spanish magistrate regarding the murders of Spanish civilians by members of the Rwandan Patriotic Front and those of the United States Department of State in regard to civilian deaths in the north-western part of the country four years after the genocide. Not every killing in time of war could be justified on the grounds of self-defence. The case of General Karenzi, involving the alleged deaths of civilians between 1994 and 1998, should also be investigated.

53. **Sir Nigel Rodley** asked for further clarification as to why disciplinary sanctions had been imposed on prison staff in the case of the Mulindi Prison strike when it had been determined the officials had acted in self-defence during the uprising.

54. **Ms. Majodina** observed that it was very important for the National Human Rights Commission to guard its political as well as financial independence and not succumb to any pressure from the Government to perform what were properly executive or parliamentary functions. Also, she would like to know if the solitary confinement legislation under consideration would maintain a double standard by

prohibiting the solitary confinement of genocide suspects transferred from the International Criminal Tribunal and found guilty by Rwandan courts, while allowing that sanction to be applied to other prisoners.

55. **Mr. Amor** noted that the Government had taken action against certain journalists whom it deemed had gone beyond the bounds of freedom of the press to become spokesmen for divisionism and hatred, which in fact governments were authorized to do under article 20, paragraph 2, of the Covenant. He nevertheless cautioned that it must be scrupulous in not overstepping its bounds in characterizing the simple use of free speech as incitement. Also, he failed to see why persons should be arrested for begging, even temporarily, and would like to know the legal definition of "vagrancy".

56. **Mr. Nsengimana** (Rwanda) said that the warehouse in which juvenile suspects were being held, as they had been held during the 1994 events, was not a prison but a triage centre near Kigali, from which the minors were either released to their families, sent for re-education or charged with vagrancy. The Government was in the process of building a new detention centre, at which point juvenile suspects would be held in prison until the triage could be completed, making their situation actually worse.

57. The offence of "vagrancy" comprised pickpocketing and drug dealing. Those accused of it included street people and prostitutes who either robbed people or sold drugs. First offenders were released, but repeat offenders were charged and tried.

58. **Mr. Rusanganwa** (Rwanda) observed that since the Criminal Code defined vagrancy as a habitual offence, recidivism was a prerequisite for conviction.

59. **Mr. Nsengimana** (Rwanda) said that the Government had had the choice of leaving suspects in prison for lengthy periods until they could be brought to trial, or resorting to the Gacaca system, with its shortcomings. It should be noted, however, that there was a national bureau of legal advisers who studied the problem cases that Gacaca justice could not handle and who regularly went into the field to observe how the system was working.

60. Those who had been arrested as political opponents were just that, and not journalists: there was no question of the Government having used the past behaviour of Radio Mille Collines as an excuse to harass journalists, who as far as he knew were not in opposition to the Government. All the cases of disappearances cited by Ms. Wedgwood would be investigated and there would be a reply in writing.

61. His Government had cooperated with the Arusha Tribunal, and there had been several cases of military officers judged by both the Tribunal and the Rwandan courts. The Karenzi case had been complicated because the charge of alleged crimes had been brought by a Spanish and a French judge, acting — improperly, in Rwanda's view — on the principle of universal jurisdiction. They had charged Karenzi only when he had been named as Deputy Force Commander of the African Union-United Nations Hybrid Operation in Darfur (UNAMID). Rwanda had officially objected; and at its eleventh summit in 2008, the African Union, having taken the decision that the principle of universal jurisdiction should not be invoked in the case of Africa, had entered into discussions with both the European Union and the United Nations to find an appropriate solution for the application of that principle.

62. In the instance queried by Sir Nigel, prison officials had indeed acted in self-defence during the inmate uprising, but the Government had imposed disciplinary sanctions on the prison director because the violence could have been avoided if he had taken his responsibilities more seriously during the events leading up to it.

63. He agreed that there was always a risk that human rights commissions would not be independent when they were funded by their governments or used by them. Rwanda's National Human Rights Commission was carefully maintaining its independence, and intentionally made its reports to the Parliament rather than the Executive as a further safeguard.

64. The issue of solitary confinement had come up in connection with prisoners transferred to Rwandan jails by the Arusha Tribunal, which forbade it. The Government had subsequently decided, in the new legislation under consideration, to have the prohibition against solitary confinement apply to all prisoners.

65. Lastly, beggars were never arrested for begging but only when they were acting as pickpockets or muggers.

66. *The members of the delegation of Rwanda withdrew.*

The discussion covered in the summary record ended at 5.35 p.m.